

**UNITED ALLIED EMPIRE SDN BHD v. PENGARAH TANAH
DAN GALIAN SELANGOR & ORS**

HIGH COURT MALAYA, SHAH ALAM
AZIMAH OMAR JC
[JUDICIAL REVIEW NO: 25-38-04-2013]
3 DECEMBER 2015

ADMINISTRATIVE LAW: *Judicial review – Application for – Acquisition of land for public purpose – Allegation of deception and deprivation of land – Whether procedural impropriety involved in acquisition process – Whether use of land to build mosque with complete amenities derailed from essence that acquisition was for public purpose – Whether sufficient notice given to land owner – Whether procedural impropriety arose*

LAND LAW: *Acquisition of land – Acquisition for public purpose – Allegation of deception and deprivation of land – Whether purpose of acquisition fell within s. 3 of Land Acquisition Act 1960 – Whether use of land to build mosque with complete amenities derailed from essence that acquisition was for public purpose – Whether acquisition within knowledge and awareness of land owner – Whether procedural impropriety arose*

The applicant in this judicial review application was the owner of a piece of land acquired by the State Authorities under the Land Acquisition Act 1960 ('the Act'). The application was filed against the respondents for an alleged *mala fide* in concert of acquiring the applicant's land on the ground, *inter alia*, of procedural impropriety, arbitrary abuse of power, legitimate expectation and *mala fide* abuse of the acquisition process to justify the means of acquisition by the ends of the acquisition. The applicant alleged that the purpose of the acquisition as mentioned in the gazette was for 'tapak Masjid Ar Ridwan' and not a masjid with full amenities for education, welfare and rehabilitation. It was on this premise that the applicant contended that it had been deceived and deprived of its land. The applicant further alleged that the acquisition had deprived it from its legitimate expectation to conduct and perform its UAE development project ('the UAE project') on the acquired lot. Forms A and D in the acquisition had duly been published in the gazette and the acquisition had sufficiently been brought to the attention of the applicant and Forms E, F, G and H had been duly served and responded to by the respondent.

Held (dismissing applicant's application):

- (1) The issuance of Form K is sufficient proof of a complete acquisition even without endorsement of the acquisition on the title as per s. 23 of the Act. The endorsement under the section is merely a formality. A land owner would cease to have any rights over his land at the time formal possession, in the meaning of s. 22, issuance of Form K, was

- A taken by the State Authorities. Thus, the applicant herein no longer had any rights over the acquired lot to contend any challenges against the acquisition post-issuance of Form K as the acquired land had completely been vested on the State Authorities. (paras 17 & 18)
- B (2) The label or nomenclature used for the purpose of acquisition does not matter so long as the purpose does not fall outside the ambit of 'public purpose'. The respondents had indeed acquired the land for a public purpose and not for any private use or enjoyment. The purpose fell within s. 3 of the Act. Whether the project utilises the totality of the land to build a masjid to the bream, or a masjid with complete amenities, did not derail from the essence that the acquisition was made for a public purpose. A masjid is still being built, with addition of amenities which would, in fact, further benefit the public, in the sphere of education, welfare and rehabilitation. (paras 26, 27 & 34)
- C
- D (3) The applicant had admitted that it had received, responded and in fact attended the enquiries which were called in Forms E, F, G and H. Hence, the acquisition was well in the knowledge and awareness of the applicant. (para 45)
- E (4) The Act has made a clear distinction in treatment between the Forms. The Forms which were served to the applicant were required to be served by its governing section. The governing sections for Forms A and D only requires the publication of the notices in the gazette. It was not a requirement under the Act that the notices be served personally to any interested parties. A gazette is a *prima facie* evidence of written law and therefore the applicant could not feign ignorance to the law and contend that it was not aware of the acquisition. Sufficient notice of Forms A and D had already been made to the applicant. Therefore, the supposition that a procedural impropriety arose from the non-service of Forms A and D was by and large a misinterpretation of the law. (paras 46, 47 & 49)
- F
- G (5) Since there was no procedural impropriety, the applicant had not been deprived of a legitimate expectation to a fair procedure. It was also preposterous that legitimate expectation would arise when the legitimacy of the UAE project had not been approved by the appropriate body and it could not therefore be an 'interest' to defeat a legitimate acquisition for proper public purpose. The legitimate expectation in the lens of the larger public interest definitely outweighed the applicant's UAE plans. (paras 53, 55, 56 & 58)
- H

Case(s) referred to:

- I *Abdul Aziz Mohd Alias v. Timbalan Ketua Polis Negara, Malaysia & Anor* [2010] 3 CLJ 643 FC (*refd*)
Ahmad Saman v. Kerajaan Negeri Kedah [2004] 1 CLJ 211 CA (*refd*)
AmBank (M) Bhd v. Menteri Sumber Manusia & Anor And Other Appeals [2014] 1 LNS 686 CA (*refd*)

- Council Of Civil Service Unions & Ors v. Minister for The Civil Service* [1985] AC 374 (refd) A
- Dato' Seri Anwar Ibrahim v. Perdana Menteri Malaysia & Anor* [2010] 5 CLJ 369 FC (refd)
- Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor* [2014] 7 CLJ 882 CA (foll)
- Minister Of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 SC (refd) B
- Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14 FC (refd)
- Pendor Banger & Ors v. Ketua Pengarah Jabatan Alam Sekitar & Ors* [2011] 1 LNS 788 HC (refd)
- Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v. Majlis Perbandaran Pulau Pinang* [1996] 3 CLJ 335 CA (refd) C
- United Development Company Sdn Bhd v. The State Government of Sabah & Anor* [2010] 5 CLJ 986 HC (dist)
- Legislation referred to:**
- Interpretation Acts 1948 and 1967, s. 18(3) D
- Land Acquisition Act 1960, ss. 3(1)(a), 4, 8, 11(1), (2), 16(1), (2), 22, 23, 35, 53, 66
- For the applicant - Ho Ai Ting; M/s Lee Hishammuddin Allen & Gledhill*
- For the 1st, 2nd & 3rd respondents - Ahmad Fuad Othman; FC, State Legal Advisor's Office, Selangor* E
- For the 4th & 5th respondents - Siti Rahimah; M/s Aishah Kama & Sabri*
- Reported by S Barathi*

JUDGMENT

Azimah Omar JC:

Background Facts

[1] This is an application for judicial review filed by the applicant, a disgruntled and unhappy landowner whose land has been acquired by the State Authorities under the Land Acquisition Act 1960 (LAA). The applicant was granted leave to commence judicial review proceeding against the respondents on 22 January 2014. G

[2] This application for judicial review was filed by the applicant against the respondents for an alleged *mala fide* act in concert of acquiring the applicant's land on the grounds *inter alia* procedural impropriety, arbitrary abuse of power, legitimate expectation and *mala fide* abuse of the acquisition process to justify the means of acquisition by the ends of the acquisition. H

[3] By this judicial review proceeding, the applicant sought numerous reliefs in the forms of *certiorari*, *mandamus*, declaration and monetary compensation. The reliefs sought are set as follows: I

- A (1) suatu Perintah *Certiorari* membatalkan keputusan Responden-Responden dalam pengambilan tanah Pemohon (“Pengambilan tersebut”) yang dipegang di bawah GRN 49148 di Lot No. 682 (kini dikenali sebagai GRN 283902 Lot 682), Mukim Bestari Jaya, Daerah Kuala Selangor, Selangor Darul Ehsan (“Tanah tersebut”) dan
- B suatu perintah *Mandamus* supaya Responden-Responden mengemukakan kesemua surat menyurat, suratcara dan semua rekod berkenaan permohonan dan asas bagi Pengambilan tersebut yang berada di dalam milikan mereka untuk memastikan tujuan
- C sebenar Pengambilan tersebut yang telah diisytiharkan dalam Warta Kerajaan bertarikh 24.5.2012 sebagai untuk “Tujuan Tapak Masjid Ar-Ridwan” yang bercanggah dengan tujuan yang diumumkan oleh Responden Ke-3, Responden Ke-4 dan Responden Ke-5 untuk tujuan pembangunan “Bangunan Sekolah Agama Negeri, Masjid/Surau, Maahad Tahfiz, Rumah Perlindungan dan Pusat Pemulihan Sekitar Selangor”;
- D (2) suatu Perintah *Certiorari* membatalkan keputusan Responden Pertama dan/atau Responden Ke-2 di dalam award pampasan Borang H bertarikh 15.1.2013 yang diserahkan kepada Pemohon pada 23.1.2013 dan selanjutnya membatalkan Pengambilan tersebut yang dibuat di bawah s. 3(1)(a) Akta Pengambilan Tanah 1960 (“APT 1960”);
- E (3) suatu Perintah *Certiorari* membatalkan keputusan Responden Pertama dan/atau Responden Ke-2 dalam meneruskan Pengambilan tersebut melalui proses milikan formal dengan mengeluarkan Borang K bertarikh 18.3.2013 yang diserahkan kepada Pemohon pada 29.3.2013 dan selanjutnya membatalkan proses Pengambilan tersebut yang dibuat di bawah s. 3(1)(a) APT 1960;
- F (4) suatu Perintah *Mandamus* mengarahkan Responden Pertama menarik balik Pengambilan tersebut atas alasan yang telah diisytiharkan dalam Warta Kerajaan bertarikh 24.5.2012 sebagai untuk “Tujuan Tapak Masjid Ar-Ridwan” jika tujuan sebenar Pengambilan tersebut adalah untuk pembangunan “Bangunan Sekolah Agama Negeri, Masjid/Surau, Maahad Tahfiz, Rumah
- G Perlindungan dan Pusat Pemulihan Sekitar Selangor”;
- H (5) suatu Perintah *Mandamus* mengarahkan Responden-Responden, jika ingin melanjutkan Pengambilan Tanah tersebut, supaya membuat pengisytiharan yang sebenarnya iaitu untuk tujuan pembangunan “Bangunan Sekolah Agama Negeri, Masjid/Surau, Maahad Tahfiz, Rumah Perlindungan dan Pusat Pemulihan Sekitar Selangor” dan bukan untuk “Tujuan Tapak Masjid Ar-Ridwan”;
- I (6) suatu Perintah *Mandamus* mengarahkan Responden Pertama, jika ingin melanjutkan Pengambilan Tanah tersebut untuk tujuan pembangunan yang lain dari “bagi maksud awam” di bawah s. 3(1)(a) APT 1960, supaya membuat pengambilan baru di bawah s. 3(1)(b) APT 1960 dan selanjutnya mematuhi peruntukan lain dalam APT 1960;

- | | |
|---|---|
| (7) suatu Perintah <i>Certiorari</i> membatalkan keputusan Responden Ke-2, Responden Ke-3 dan Responden Ke-4 mengambil Tanah tersebut atas perisytiharan untuk “Tujuan Tapak Masjid Ar-Ridwan” di bawah s. 3(1)(a) APT 1960; | A |
| (8) suatu Perintah bahawa segala prosiding lanjut dalam Pengambilan tersebut digantung, terutama sekali proses milikan formal, catatan pengambilan dalam hakmilik daftar serta apa-apa juga tindakan lanjutan lain yang berkenaan Pengambilan tersebut sehingga pelupusan akhir dan muktamad permohonan untuk Semakan Kehakiman ini; | B |
| (9) satu deklarasi bahawa Pengambilan tersebut yang diisytiharkan sebagai untuk “Tujuan Tapak Masjid Ar-Ridwan” di bawah s. 3(1)(a) APT 1960 adalah ‘ <i>mala fide</i> ’, melampaui dan bercanggah dengan tujuan sebenar pengambilan Tanah tersebut; | C |
| (10) satu deklarasi bahawa keseluruhan proses Pengambilan tersebut dari Borang D sehingga pengeluaran Borang K adalah tidak sah dan terbatal; | D |
| (11) satu deklarasi bahawa award pentadbir tanah dalam Borang H bertarikh 15.1.2013 yang diserahkan kepada Pemohon pada 23.1.2013 adalah tidak sah dan terbatal; | |
| (12) satu deklarasi bahawa tidak ada keperluan untuk membuat Pengambilan tersebut bagi “Tujuan Tapak Masjid Ar-Ridwan” kerana pelan pembangunan Pemohon telahpun membuat peruntukan bagi Rizab Masjid; | E |
| (13) satu deklarasi bahawa Pengambilan tersebut yang merangkumi keseluruhan tanah seluas 26.280 ekar (1,144,782 kaki persegi) adalah melampaui keperluan bagi kegunaan sesebuah masjid yang lazimnya hanya memerlukan tanah seluas tidak melebihi satu ekar dan oleh itu menjadi tidak sah dan terbatal; | F |
| (14) satu deklarasi bahawa Responden-Responden telah berkonspirasi dalam pengambilan Tanah tersebut dengan mengisytiharkannya “bagi maksud awam” di bawah s. 3(1)(a) APT 1960 sedangkan Pengambilan tersebut adalah untuk tujuan pembangunan masa depan Responden Ke-3 hingga Responden Ke-5 dan oleh itu Pengambilan tersebut adalah tidak sah dan terbatal; | G |
| (15) satu deklarasi bahawa Responden-Responden telah berkonspirasi dalam membuat Pengambilan Tersebut secara ‘ <i>mala fide</i> ’ dengan mengisytiharkannya bagi “Tujuan Tapak Masjid Ar-Ridwan” untuk menekan nilai pampasan yang perlu dibayar kepada Pemohon dan oleh itu Pengambilan tersebut adalah tidak sah dan terbatal; | H |
| (16) satu deklarasi bahawa Responden Pertama dan Ke-2 telah berlaku ‘ <i>mala fide</i> ’ dengan menyalahgunakan peruntukan APT 1960 apabila memberikan pampasan dalam Borang H tanpa mengambil kira kerugian-kerugian yang ditanggung oleh Pemohon akibat daripada kehilangan Projek Komersial Bersepadu (“Projek UAE”) pembangunan Pemohon; | I |

A (17) suatu deklarasi bahawa Pemohon mempunyai jangkaan sah ('legitimate expectation') bahawa setelah mencantumkan tanah tersebut dan tanah bersebelahannya yang dipegang di bawah GRN 93904 di Lot No. 514, Mukim Bestari Jaya, Daerah Kuala Selangor, Selangor Darul Ehsan ("Lot 514") untuk tujuan pembangunan Projek UAE tersebut tidak boleh diganggu oleh pihak-pihak lain termasuk Responden Ke-3 hingga Responden Ke-5;

B (18) suatu deklarasi bahawa Pemohon mempunyai jangkaan sah ('legitimate expectation') bahawa Pengambilan tersebut perlulah mengambil kira dan mematuhi semangat sebenar APT 1960 untuk tidak mencederakan, merugikan dan menindas Pemohon sebagai pemilik Tanah tersebut yang sah;

C (19) suatu deklarasi bahawa Pemohon mempunyai jangkaan sah ('legitimate expectation') bahawa Pengambilan tersebut tidak boleh bercanggah dengan semangat sebenar Fasal 13 Perlembagaan Persekutuan dan penindasan serta pelanggaran oleh Responden-Responden terhadap hak asasi Pemohon ke atas hartanya menjadikan Pengambilan tersebut tidak sah dan terbatal;

D (20) suatu deklarasi bahawa prodising lanjut dalam Pengambilan tersebut terutama sekali proses milikan formal, catatan pengambilan dalam hakmilik daftar serta apa-apa juga tindakan lanjutan lain yang berkenaan Pengambilan tersebut adalah tidak sah dan terbatal;

E (21) bahawa segala arahan dan perintah yang perlu berikutan hendaklah diberi

(22) pampasan ditaksirkan di atas pembatalan Pembilan tersebut;

F [4] The applicant (United Allied Empire Sdn Bhd) is the owner of Lot 682 GRN 283902, Mukim Bestari Jaya, Daerah Kuala Selangor ("acquired lot") measuring at 26.281 acres. The applicant implicates all the first to the sixth respondents (Pengarah Tanah dan Galian Selangor (first respondent), Pentadbir Tanah Daerah Kuala Selangor (second respondent), Jabatan Agama Islam Selangor (third respondent), Majlis Agama Islam Selangor (fourth respondent), Lembaga Zakat Selangor (fifth respondent) & Kerajaan Negeri Selangor (sixth respondent)) as parties responsible for the acquisition of the acquired land. This court shall not delve into the involvements of each respondents to the acquisition owing to the fact that this court, even at this preliminary juncture, finds that the applicant's case to be untenable and without merits. Suffice that this court saves time and costs in addressing directly the substance of the present case.

H [5] However, before considering the applicant's application, it is only appropriate for this court to just summarise briefly the well settled legal principles relating to judicial review proceeding.

I [6] The grounds upon which administrative action is capable of challenge are propounded by Lord Diplock in *Council Of Civil Service Unions & Ors v. Minister Of Civil Service* [1985] AC 374. In this case, the House of Lords has

redefined the law and the scope of judicial review by classifying the court's judicial control or supervisory control over administrative actions or decisions of the executive bodies or authorities into three heads. On the classification of the three heads, Lord Diplock speaking for the House of Lords remarked:

One can conveniently classify under three heads the grounds on which administrative action is subject to control any judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further observation on a case by case basis may not in course of time add further grounds.

[7] The courts in Malaysia have since adopted and applied this principle of law in administrative law. In the case of *Minister Of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 the Supreme Court has applied the principle enunciated by Lord Diplock in *Council of Civil Service Unions* [1985] AC 374 . The Supreme Court held *inter alia*:

[1] Applying the principles enunciated by Lord Diplock in *Council of Civil Service Unions & Ors. v. Minister of Civil Service*, there are 3 grounds upon which administrative action is subject to judicial review. They are:

- (i) "illegality" - the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it;
- (ii) "irrationality" - decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it;
- (iii) "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be effected by the decision - this is because susceptibility to judicial review under this head covers also failure by the administrative tribunal to observe procedural rules expressly laid down in the legislative instrument by which its jurisdiction is conferred even where the failure does not involve any denial of natural justice.

[8] This court is also guided by the decision of the Court of Appeal in *Ambank (M) Bhd v. Menteri Sumber Manusia & Anor And Other Appeal* [2014] 1 LNS 686; [2014] 6 MLJ 377:

It has been accepted by the courts too that ... the court could still go behind the decision, where the allegations raised were to the effect that the decision maker had transgressed principles of procedural impropriety, illegality or irrationality (may be even proportionality) in arriving at the impugned decision.

In those circumstances, it was open to the court to extend its scrutiny into the area of the merits or justification behind that decision.

- A [9] Reverting back to the applicant's grievances over the acquisition of its land, this court had mentioned earlier that the applicant had mounted serious allegations of *mala fide* act, procedural impropriety, arbitrary abuse of power, *mala fide* abuse of the acquisition process and false declaration of the purpose of the acquisition in the Government *Gazette* against the respondents acquiring the acquired lot.

- B [10] This court must also mention one pertinent fact with regards to the applicant's knowledge of the real purpose of acquisition in which the applicant claimed that the applicant was never informed of the real purpose of the acquisition, despite making various enquiries to the respondents. The applicant also claimed that only upon various searches made, that the applicant subsequently discovered that the first respondent had made a declaration in the State Government *Gazette* that the acquired is to be compulsorily acquired for a public purpose under s. 3(1)(a) of the LAA 1960 for "Tujuan Tapak Masjid Ar-Ridwan". The true fact is, even prior to the acquisition of the acquired lot, the fifth respondent has erected a notice board on the acquired lot indicating that the lot is being developed for "Masjid/ Surau, Maahad Tahfiz, Rumah Perlindungan dan Pusat Pemulihan Sekitar Selangor". Thus, even before the acquisition took place, the applicant knew of the extent of the program intended to be developed upon the acquired lot. This is clearly shown in the applicant's letter dated 23 April 2012 to the fifth respondent demanding that the notice board be removed. (*Gazette* Notification No. 2198, notification of the acquisition was published on 24 May 2012)

- D [11] *Vide Gazette* No. 2198 dated 24 May 2012 ("*Gazette*") that the State Authorities decided under s. 3(1)(a) of the Land Acquisition Act ("Act") that the acquired lot shall be acquired for:

- E permohonan pengambilan tanah di bawah seksyen 3(a)(a) Akta Pengambilan tanah 1960 (APT) untuk tujuan tapak Masjid Ar-Ridwan (lama) Bestari Jaya geran 49148 Di Lot 682 (kini dikenali sebagai GRN 283902) Mukim Bestari Jaya Daerah Kuala Selangor.

- G [12] As said earlier, the applicant's judicial review application is heavily or mainly premise on the allegations of abuse and *mala fide* conduct of the acquisition in that the *Gazette* has only mentioned that the purpose of the acquisition is merely for "tapak Masjid Ar-Ridwan" or space or site for Masjid Ar-Ridwan, instead of a masjid with full amenities for education, welfare and rehabilitation as indicated in the fifth respondent's notice board.

- H [13] It is on this premise that the applicant contends that to a certain extent, the applicant was deceived or fooled and deprived of its land, notwithstanding the fact that the alleged 'difference' contended, brought forth the same meaning and public benefit and in fact an increase of public benefit.

I

[14] The applicant also contends that the acquisition has deprived the applicant from its legitimate expectation to conduct and perform the UAE Development Project ("UAE Project") on the acquired lot. However, it is an undisputed fact that the plan for the UAE Project has not even been approved by the proper authorities.

A

[15] Forms A and D in the acquisition have duly been published in the *Gazette* and the acquisition has sufficiently been brought to the attention of the applicant. Forms E, F, G and H have duly been served and responded to by the respondents.

B

Conclusive Vesting Of The Property Upon Issuance Of Form K

C

[16] It is the respondents' case that upon issuance of Form K, which is the time in which the State Authorities take "formal possession" of the land under ss. 22 and 23 of the Act that the acquisition is completed and the owner of the acquired lot no longer has any rights over the acquired lot except for compensation. This is further solidified with the conjunctive reading of ss. 35 and 66 of the Act.

D

Sections 22 and 23 of the Act respectively reads:

Formal possession

22(1) The Land Administrator shall take formal possession of any scheduled land by serving upon the occupier thereof or, if he cannot be found, by posting thereon, a notice in Form K.

E

(2) A copy of the list of lands gazetted under subsection 8(1), or any relevant part thereof, shall be included as a schedule to the notice in Form K.

F

(3) Upon taking possession of land under subsection (1) the Land Administrator shall also serve a copy of the notice in Form K upon:

(a) the registered proprietor of the land, where he is not the occupier; and

(b) the proper registering authority, where he is not the Land Administrator himself.

G

Entry in register

23 The proper registering authority, upon receipt of the notice in Form K, or the Land Administrator of his own motion after completing Form K, shall, upon the register document of title or other appropriate record in his possession as specified in subsection 9(2) or (3), make with respect to any scheduled land a memorial:

H

(a) that the whole of such land has been acquired and has vested in the State Authority or, in the case of a parcel of a subdivided building, in the person or corporation on whose behalf the parcel has been acquired; or

I

(b) that so much of the land as is specified in the last column of the schedule to such Form has been acquired.

- A [17] It has already been decided as precedent by the Court of Appeal in the case of *Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor* [2014] 7 CLJ 882 that the issuance of Form K is sufficient proof of a complete acquisition even without endorsement of the acquisition on the title as per s. 23 of the Act and that the endorsement under s. 23 is merely a formality.
- B [18] In the same Court of Appeal decision, the Court of Appeal has decided that a land owner would cease to have any rights over his land at the time formal possession (in the meaning of s. 22, issuance of Form K) was taken by the State Authorities.
- C [19] Thus, it naturally entails in the present case that the applicant no longer has any rights over the acquired lot to contend any challenges against the acquisition post-issuance of Form K as the acquired land has completely been vested onto the State Authorities.
- D [20] This court is minded that the applicant attempted to distinguish the Court of Appeal's decision in *Ishmael Lim*'s case with the present case on the grounds of certain factual differences. In that in *Ishmael Lim*, the Court of Appeal had to decide on the defeasibility of a title and the rights of a registered proprietor to pass good title to a transferee after the issuance of Form K in the acquisition. This court however by and large is not persuaded by the demarcation drawn by the applicant. Be that as it may the facts may differ, but the essence and core principles of the case (being, the termination of ownership, completion of acquisition, complete possession and vesting of ownership upon issuance of Form K) remains relevant and applicable in the present case as the principle determines if the applicant even has anymore rights to contend against the acquisition (except for compensation) when the acquisition has become complete.
- E
- F [21] A simple reading of the decision would reveal that the court has specifically delved into the effect of the issuance of Form K in acquisitions and not merely on the issue of defeasibility of title. Mah Weng Kwai JCA, delivering the decision of the Court of Appeal has held:
- G Upon the issuance of Borang K in 1974, the land had been vested in the State Authority notwithstanding that there was an omission to endorse the memorial on the title, which was a requirement under s. 23 of the Act. The requirement for an endorsement of the memorial was a formality and the omission to do so did not invalidate the acquisition process. As such,
- H the purported transfer of the land in 1975 to the appellant's father and in 1992 to the appellant was void and ineffective. The acquisition process had ended in 1974 ...
- I We are of the view that upon a closer reading of ss. 22 and 23 of the Act it is clear that once formal possession of the land has taken place the land vests with the State Authority...
- The acquisition process is deemed ended and final and the State Authority cannot resile from its position. Likewise in this case, once Borang K had been issued giving notice that possession has been formally

taken of the land under s. 22 of the Act it signalled the completion of the acquisition process and that the ownership of the land by the proprietor at the material time had terminated.

A

[22] Thus even at this early juncture, this court finds that the applicant no longer has any rights to challenge the acquisition as the acquisition is already complete and the acquired lot has already been taken into formal possession and vests onto the State Authority.

B

The Acquisition Was Made *Bona Fide* And There Was No Change Of Purpose Of Acquisition

[23] As prelude, this court refers to the relevant provision in s. 3(1)(a) of the Act which reads:

C

3(1) The State Authority may acquire any land which is needed-

(a) for any public purpose;

[24] Therefore, at the core of an acquisition is public's benefit and interest. The applicant has at lengths contended that the alleged change of purpose was proof of an abuse of power and *mala fide* intent by the respondents. It is a given that both parties would rely on the trite principle propounded in the case of *Minister of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ (Rep) 186 in which the Supreme Court has held that "illegality", "irrationality" and "procedural impropriety" are grounds to challenge an executive's decision. However, for added precision and relevance to this case, this court is guided by the more recent case of *Ahmad Saman v. Kerajaan Negeri Kedah* [2004] 1 CLJ 211 CA in which the Court of Appeal has laid down four grounds to challenge a land acquisition. Those grounds being:

D

E

F

(a) that the acquiring authority has misconstrued its statutory powers;

(b) that the purpose stated in the Declaration does not come within s. 3;

(c) where it can be shown that the acquiring authority has acted in bad faith; or

G

(d) that the acquiring authority has acted contrary to law.

[25] Now, having in mind that all of the applicant's contentions lean on the presupposition of the purpose of which the acquisition was conducted, limbs (b) and (c) of the above precedent becomes verily relevant. The symbiosis between the element of bad faith and also the purpose of acquisition is further explained by the Court of Appeal in the same decision above:

H

Mala Fides

The second issue is whether or not the State Government acted *mala fide* i.e in bad faith when acquiring this property...

I

A See also the judgement of this Court in *S. Kulasingam & Another v. Commissioner of Lands, Federal Territory & Ors* [1982] CLJ (Rep) 314; [1982] 1 MLJ 204, 2011. In an old English case Vaughan Williams LJ said in the Court of Appeal:

B In my judgment, it is not true to say that the corporation have taken this land which they have taken with the object of using it for the purposes authorised by the legislature ... You are acting *mala fide* if you are seeking to acquire and acquiring lands for a purpose not authorised by the Act of Parliament.

C [26] Thus, it matters not the label or nomenclature used for the purpose of acquisition. It makes no difference unless the actual purpose falls outside the ambit of “public purpose”. And the respondents have indeed acquired the land for a public purpose and not for any private use or enjoyment. Suffice that the purpose comes within s. 3 of the Act. It makes no difference to the applicant whether the acquired land is used for one masjid or a masjid with full amenities.

D [27] It remains that these amenities are immensely beneficial for the public at large. Whether the project utilises the totality of the land to build a masjid (strictly for prayers) to the bream, or a masjid with complete amenities, it does not derail from the essence that the acquisition was made for a public purpose. In fact, the development plan for a masjid with full amenities for education, welfare and rehabilitation adds tremendous value for public benefit rather than a single place of worship.

E [28] There is no shift of anything here. The core of the acquisition remains intact and constant. That verily, the acquisition is for a public purpose.

F [29] The applicant has vigorously relied upon the case of *United Development Company Sdn Bhd v. The State Government of Sabah & Anor* [2010] 5 CLJ 986 in contending that the acquisition in the present case contras the law in that the development conducted has changed from the specific purpose in which the acquisition was made. The High Court in *United Development* has decided the following:

G The spirit of the LAA is to allow the State Government to acquire lands for specific public purposes. It does not give the State Government *carte blanche* to deal with the acquired lands in any manner it deems fit post acquisition. If for instance a piece of land was acquired for building a hospital it cannot be used as a dump site.

H [30] The principle above is superbly sound. Indeed the Act does not confer to the authorities, a blank card or *carte blanche* to do as they please. The excerpt above even goes to comment on the authority of the State Government after the acquisition was made, in that an acquired lot for the public’s healthcare benefits cannot be abused to be a dump site which would instead go to the public’s detriment. This principle is sound and this court agrees. But notwithstanding the correctness of these principles, the same principles do not go in favour of the applicant’s case at all.

I

[31] The excerpt referred to by the applicant is sound as principle but a far cry from any similarities to the facts of the present case. A

[32] The example given by the learned JC in *United Development* was the blatant change of purpose of a healthcare facility to a garbage disposal site. The change of purpose there is so vast. In that case, the example given entails a derailment of the public purpose for public benefit, to be public detriment. Instead of providing the specific purpose of healthcare to the populace (which is to the public's benefit) the derailment into a dump site instead turns the acquisition for the purpose of public detriment. The difference between the benefit of a hospital and the detriment of having a dumping site (which would cause public nuisance, discomfort and animosity from a multitude of pollutions) is obvious. B
C

[33] But there were no such change of purpose in the present case. It is reiterated that a masjid is not merely a place of worship. It is common that the amenities and components of a mosque also comprises of a place of education, welfare and rehabilitation. It is not uncommon that a masjid would have an educational institution within its compound. The components and amenities of a masjid are not necessarily confined to a space for prayers. It is wider than that. A masjid is not only centre piece for religious worship, it is also a centre for education and community. D

[34] The essence of the purpose remains intact. A masjid is still being built, with addition of amenities which would, in fact, further benefit the public, in the sphere of education, welfare, and rehabilitation. E

[35] Contrary to the applicant's supposition, the erection of the notice board by the fifth respondent is in fact further proof of the non-confusion of the term "masjid" in the *Gazette*. F

[36] The signage was erected even before the acquisition was made. It is already made known and admitted to be known by the applicant that the development project intended shall comprise of a masjid with full amenities and facilities for education, welfare and rehabilitation. With this prior knowledge, then it entails that the *Gazette* should have not posed an iota of confusion to the applicant. G

[37] Clearly here, there has never been any malice or concealment by the respondents. There is no room for the applicant to contend that they were led to believe that the acquired lot was acquired solely for a place of worship. H

[38] In fact with this prior knowledge, coupled with the applicant's knowledge that the scheduled land is considerably larger than the guideline by JAIS on the sizes of masjid, it is common sense that the applicant would have known that the *Gazette* would mean "masjid" with full amenities for prayers, education, welfare and rehabilitation. I

A [39] The applicant knew the scheduled land was large and the applicant knew that the development project intended is for a masjid with full amenities. There is no confusion, no concealment and definitely no malice in the present case.

B [40] The applicant besides contending on the non-existence of *carte blanche* discretion has also contended the exercise of statutory power in acquiring land must not neglect the interest of the land owner. Reference was made to the Federal Court decision in *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35. Verily, this principle is sound. It goes without saying that the authorities should not neglect the interest of the land owner. But even with that said, there is nothing in the present case that indicates that the respondents have totally discounted the applicant's interest upon the land.

D [41] First and foremost, for the acquired lot acquisition, notice and adequate compensation has already been paid. The only remnant of challenge that persisted in the present case is the purported *mala fide* purpose in which the scheduled land was acquired.

E [42] Secondly, as against the supposed interest leaning on the UAE Project, this court must stress that the plan is merely plan. Not yet even a legitimate plan. It has not been put into action. It has not even been approved by the proper authorities. It is incredulous to assume that any legitimate interest (on a plan) can arise when the legitimacy of the plan has not been approved by the authorities. Thus, no reference or reliance can be put upon UAE Project as an "interest".

F [43] Thus, it is this court's decision that the acquisition was made *bona fide* and there was no change of purpose of acquisition.

There Are No Procedural Improprieties In The Conduct Of Acquisition Of The Acquired Lot

G [44] The applicant has voluminously contended on a supposed deprivation of rights to be heard and an alleged procedural impropriety merely on the ground that Forms A and D were not personally served to the applicant.

H [45] First and foremost, against the allegation of deprivation of rights to be heard, this court does not hesitate to dismiss this contention. It is undisputed and admitted by the applicant itself that it has received, responded and in fact attended the enquiries which were called in Forms E, F, G, and H. The acquisition was well in the knowledge and awareness of the applicant and the applicant has admittedly responded to the acquisition.

I [46] Secondly, the supposition that a procedural impropriety arose from the non-service of Forms A and D is by and large a misinterpretation of the law. The governing sections for Forms A and D only requires the publication of the notices in the *Gazette*. It is not a requirement under the Act that these notices be served personally to any interested parties. Sections 4 and 8 of the Act stipulate:

- 4(1) Whenever the State Authority is satisfied that any land in any locality in the State is likely to be needed for any of the purposes referred to in section 3 a notification in Form A shall be published in the *Gazette*. **A**
- (2) The Land Administrator shall give public notice of any notification published under subsection (1) in the manner prescribed by section 52... **B**
- 8(1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the *Gazette*.
- [47]** The Act has made a clear distinction in treatment between the forms. Those forms which were served to the applicant are required to be served by its governing section. Section 11(1) and (2), and s. 16(1) and (2) of the Act, explicitly stipulates that Forms E, F, G, and H must be served to interested parties of the land: **C**
- 11(1) The Land Administrator shall, in addition to giving public notice as required by subsection 10(1), in respect of all scheduled land specified in every notice in Form E, serve copies of such notice in the manner prescribed by section 53, upon- **D**
- (a) the occupier of such land; **E**
- (b) the registered proprietor of such land, where he is not the occupier thereof; **E**
- (c) any person having a registered interest in such land; **F**
- (d) any person whom he knows or has reason to believe to be interested therein: **F**
- (2) The Land Administrator in any particular case may also, by service of a notice in Form F, require the registered proprietor of any land, specified in any notice in Form E, or any other person who may in the opinion of the Land Administrator have knowledge of the fact referred to therein, within such period as may be prescribed in such notice to furnish a statement in writing of the information required by such Form. **G**
- 16(1) On making any award under subsection 14(1) in respect of any scheduled land the Land Administrator shall prepare and serve on each person interested in such land a notice in Form H. **H**
- (2) Every notice in Form H shall include an extract from the written award of the Land Administrator in Form G, relating to the land in which the person to whom such notice is addressed has an interest. **H**
- [48]** The governing section for Forms A and D has explicitly omitted any reference to any requisite of a service or any reference to the defining section of a service under s. 53 of the Act. **I**

- A [49] Thus, having Forms A and D only required to be gazetted, then clearly the applicant's contention cannot stand. And it is already trite law that a *Gazette* is a *prima facie* evidence of written law (see *Dato' Seri Anwar Ibrahim v. Perdana Menteri Malaysia & Anor* [2010] 5 CLJ 369 FC) and therefore, the applicant cannot feign ignorance to the law and contend of not being aware of the acquisition. It is also trite that a *Gazette* shall constitute sufficient notice. (see s. 18(3) of the Interpretation Acts 1948 And 1967; *Abdul Aziz Mohd Alias v. Timbalan Ketua Polis Negara, Malaysia & Anor* [2010] 3 CLJ 643 FC). Therefore, sufficient notice of Forms A and D has already made to the applicant.
- B
- C **There Is No Legitimate Expectation For The Applicant To Claim**
[50] The applicant in its bid to salvage its case also argued that owing from the applicant's UAE Development Plan the applicant has a legitimate expectation to not be deprived of the usage of the acquired lot.
- D [51] The circumstances which raises a legitimate expectation has been succinctly encapsulated in the case of *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v. Majlis Perbandaran Pulau Pinang* [1996] 3 CLJ 335 at pp. 379-381:
- E The phrase "legitimate expectation" may be used in various distinct senses. It may be used to denote a substantive right which is established when there is a clear representation by the administrator or public body which could be reasonably relied upon by the claimant.
- F Employed in this sense, the doctrine is akin to an estoppel.
- F Secondly, legitimate expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness.
- G In this sense, the law recognises that the interest cannot properly be withdrawn or denied without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision.
- G Thirdly, the concept of legitimate expectation may be used to refer to the fair procedure itself. In other words, it is contended that the claimant has a legitimate expectation that the public body will act fairly towards him.
- H The final category of legitimate expectation encompasses those cases in which it is held that a particular procedure, not otherwise required by law in the protection of an interest, must be followed consequent upon some specific promise or practice.
- I [52] However, the present case does not fall within the application of any of the above circumstances. The UAE Project has not even been approved by the authorities yet. It is merely a plan. There is nothing concrete in a plan to allow the applicant to claim legitimate expectation.

[53] It is preposterous that legitimate expectation would arise when the legitimacy of the plan has not been approved by the appropriate body. A

[54] There is nothing at all to indicate that the authorities have represented any acceptance or affirmation to the UAE Plan that the applicant could rely upon.

[55] As has been decided earlier, there is no procedural impropriety. Therefore, the applicant was not deprived of a legitimate expectation to a fair procedure. B

[56] At the very essence of this contention, the UAE Project being bare and still not approved by the authorities, cannot be an 'interest' to be asserted in the first place to defeat a legitimate acquisition for the proper public purpose. C

[57] It is pertinent for this court to highlight an interesting precedent relied upon, *albeit* selectively, by the applicant. Besides the highlighted portion of the decision in the case of *Pendor Banger & Ors v. Ketua Pengarah Jabatan Alam Sekitar & Ors* [2011] 1 LNS 788 quoted in the applicant's submission, the decision continues to read: D

However, whether the expectation of the Applicants is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the Applicant's perception but in the larger public interest where other more important considerations may outweigh what otherwise have been the legitimate expectation of the Applicants. E

[58] And this is exactly how this court has decided on the legitimacy of the applicant's alleged expectation. The legitimate expectation in the lens of the larger public interest (one interest with more important considerations) definitely outweighs the applicant's UAE plans which still remain bare and not approved by the authorities. F

[59] Thus, it is this court's decision that no legitimate expectation can arise from the UAE Project and be relied upon by the applicant. G

Court's Decision

[60] In light of all of the above findings, it is this court's decision that the applicant has ultimately failed to prove its case.

[61] This court hereby dismisses the applicant's application. H

On The Issue Of Costs

[62] Having heard the submission from learned counsels for the applicant and the respondents, this court hereby orders the applicant to pay the respondents a global sum of RM20,000 in costs. I